

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RONALD G. BEAGLES,

Plaintiff(s),

v.

MAGGIE MILLER-STOUT,

Defendant(s).

NO. C02-203P

ORDER ON SECOND REPORT AND
RECOMMENDATION

The above-entitled Court, having received and reviewed:

1. Second Report and Recommendation
2. Objection to Second Report and Recommendation
3. Response to Objections to Second Report and Recommendation
4. Reply to State's Response; Second Report & Recommendation

and all exhibits and declarations attached thereto, makes the following ruling:

IT IS HEREBY ORDERED that the Second Report and Recommendation is ADOPTED; Petitioner's § 2254 petition will be DENIED and this action DISMISSED pursuant to FRCP 41(b) for failure to comply with the Magistrate Judge's October 2005 order.

Discussion

The Court will not repeat the lengthy procedural history of this case and toward that end incorporates the "Background and Discussion" section of the Second Report and Recommendation (Dkt. No. 32) herein.

The Ninth Circuit Court of Appeals remanded this matter with clear guidelines directing this Court to "offer [P]etitioner the opportunity to dismiss unexhausted claims, and to consider the alternative of staying the petition after dismissal of unexhausted claims, in order to permit [P]etitioner

1 to exhaust those claims and add them by amendment to his stayed federal petition..." Memorandum,
2 No. 02-36004, p.2. The Magistrate Judge accomplished that by an order dated October 7, 2005 (Dkt.
3 No. 29).

4 Rather than comply with that order, Petitioner has chosen to file an amended petition which
5 neither deletes his unexhausted claims nor indicates whether he wishes to stay the remainder of his
6 petition while he proceeds with the exhausted claim. Petitioner continues to assert the arguments
7 which have been considered and rejected at every stage of this proceeding; namely, that all 15 of the
8 grounds contained in his original petition have been properly exhausted prior to bringing them to
9 federal court. Rather than comply with the Magistrate Judge's October 2005, he once again asks this
10 Court to find that he is legally permitted to seek relief on all the grounds he claims.


11 This Court will not reiterate the rulings or rationale which have brought Petitioner's case to
12 this point, but will point out that the Ninth Circuit noted the prior finding of this Court (that "the
13 instant § 2254 petition was a mixed petition") in its memorandum opinion and said nothing to disturb
14 or dispute the lower courts' conclusion that certain of Petitioner's claims were unexhausted. Even if
15 this Court were inclined at this juncture to finally credit Petitioner's persistently held position
16 regarding the exhaustion of all his claims, the contrary finding is now a matter of Ninth Circuit
17 precedent and this Court has no authority to overturn that case law.

18 **Conclusion**

19 This Court orders that Petitioner's § 2254 petition be DENIED and this action DISMISSED
20 pursuant to FRCP 41(b) for failure to comply with the Court's order of October 2005.

21 The clerk is directed to provide copies of this order to all counsel of record.

22 Dated: November _8_, 2006

23 
24 Marsha J. Pechman
25 U.S. District Judge
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